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OREGON SCHOOL LAW UNCONSTITUTIONAL

The Supreme Court of the United States, in an opinion handed down on June 1, 1925, in the cases of Walter M. Pierce as Governor of the State of Oregon et al. v. The Society of the Sisters of the Holy Names of Jesus and Mary, and the same appellants v. Hill Military Academy, 45 Supreme Court 571, holds that the well-known Oregon Compulsory Education Act is unconstitutional. The appeals were from decrees granting preliminary orders restraining appellants from threatening or attempting to enforce the Compulsory Education Act, adopted November 7, 1922, under the initiative provision of the Constitution of that State. The Act in question, which was to become effective September 1, 1926, required every parent, guardian or other person having control or charge or custody of a child between eight and sixteen years to send him "to a public school for the period of time a public school shall be held during the current year, in the district where the child resides." A failure to comply with the Act was made a misdemeanor. There were certain exceptions noted in the Act which need not be mentioned.

The Society of Sisters is an Oregon Corporation with power to care for orphans, educate and instruct the youth, establish and maintain academies or schools, etc. It has power to acquire property for the purposes of its organization, and has long devoted its property and effort to the secular and religious education and care of children.

The Hill Military Academy is a private corporation organized under the laws of Oregon, and engaged in owning, operating and conducting for profit an elementary, college preparatory and military training school for boys between the ages of five and twenty-one years.

The lower court held that the right to conduct schools was property and that parents and guardians, as part of their liberty, might direct the education of children by selecting reputable teachers and places; that appellees' schools were not unfit or harmful to the public, and that enforcement of the challenged statute would unlawfully deprive them of patronage and thereby destroy appellees' business and property. No question was raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

We quote from the opinion of the Court as follows:

"The inevitable practical result of enforcing the Act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the State of Oregon. Appellees are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students or the State. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

"Under the doctrine of Meyer v. Nebraska, 262 U. S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.

As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

"Appellees are corporations and therefore, it is said, they cannot claim for themselves liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. Northwestern Life Ins. Co. v. Riggs, 203 U. S. 243, 255; Western Turf Association v. Greenberg, 204 U. S. 359, 363. But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action. Truax v. Raich, 239 U. S. 33; Truax v. Corrigan, 257 U. S. 312; Terrace v. Thompson, 263 U. S. 197.

"The courts of the State have not construed the Act, and we must determine its meaning for ourselves. Evidently it was expected to have general application and cannot be construed as though merely intended to amend the charters of certain private corporations, as in Berea College v. Kentucky, 211 U. S. 45. No argument in favor of such view has been advanced.

"Generally it is entirely true, as urged by counsel, that no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power of the State upon the ground that he will be deprived of patronage. But the injunctions here sought are not against the exercise of any *proper* power. Appellees asked protection against arbitrary, unreasonable and unlawful interference with their patrons and the consequent destruction of their business and property. Their interest is clear and immediate, within the rule approved in Truax v. Raich, Truax v. Corrigan and Terrace v. Thompson, supra, and many other cases where injunctions have been issued to protect business enterprises against interference with the freedom of patrons or customers. Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229; Duplex Printing Press Co. v. Deering, 254 U. S. 443; American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184; Nebraska District, etc. v. McKelvie, 262 U. S. 404; Truax v. Corrigan, supra, and cases there cited."

NOTES OF IMPORTANT DECISIONS

NEGLIGENCE IN MAINTAINING SLOT MACHINE IN PLACE OF AMUSEMENT.—Whether defendant was negligent in maintaining a slot machine on a low shelf, to which it was not fastened, in a public amusement place, in such a manner that a child, a patron of the place, could and did pull the machine from the shelf, personal injury resulting, was held by the Supreme Court of Minnesota, in Attebury v. Jones, 202 N. W. 337, to be for the jury. We quote as follows from the Court's opinion:

"The accident occurred at Longfellow Gardens, a public amusement place operated by defendant in Minneapolis. The attractions by way of menagerie and otherwise, are especially attractive to children, who visit the place in large numbers. An admission fee is charged. At the time in question, a portion of an open balcony or sun room was used to some extent as a waiting room. Therein were chairs for the use of patrons desiring to pause for a brief rest. On one side was a shelf about three feet from the floor, upon which was placed a slot machine or automatic vending apparatus, of a kind frequently seen in such places. The shelf had a slight tilt to the rear, so that the machine leaned backward a trifle, and against a large post, to which the shelf was fastened. The slot machine was a boxlike affair, about a foot wide and 16 inches high. It weighed 25 pounds. The front of it was so equipped with colored signs and display reading matter that a

jury finding that it might be expected to attract the attention of a child would not be open to just criticism.

"The testimony as to how the little girl was injured is conflicting. That for plaintiff was to the effect that, while the two elder members of her party were sitting nearby and otherwise engaged, she went to the shelf with a coin, in an attempt to operate the machine; that she was barely able to reach the lower front edge by standing on tiptoe; that she did so reach the machine, and in some way pulled it off the shelf, forward and down onto herself, resulting in the injury complained of. The testimony for the defense was that the little girl was not attempting to operate the machine, but had climbed up on a rocking chair standing near the shelf, started to fall, and in doing so grabbed the machine, in an effort to save herself apparently, and so pulled it down.

"A majority of the court is of the opinion that, whichever view of the case is taken, there was a question as to defendant's negligence which should have gone to the jury. He was under a duty to exercise due care for the protection of his patrons, old or young. The machine in question, the result demonstrated, was within reach of a child whose curiosity may have been excited by it. That being the case, there is room for the opinion, on the facts, that the machine should have been so fastened as to protect a child on pleasure bent who, through the curiosity characteristic of tender years, might be led into such an investigation or attempted use of the machine as could lead to accident otherwise. It is a situation where reasonable minds, addressing judicial attention to the problem, may arrive at different conclusions with respect to defendant's conduct—some deeming it due care, and others negligence."

LOSS OF SIGHTLESS EYE HELD NOT COMPENSABLE.—Section 7290, C. O. S. 1921, as amended by Senate Bill 155, chapter 61, § 6, Session Laws of Oklahoma 1923, provides that one injured may, in compliance with the Oklahoma Compensation Act, receive 100 weeks compensation, medical expenses, hospital fees, etc., for the loss of an eye; that the permanent loss of the use of an eye shall be considered as the equivalent of the loss of such eye. The record examined, and held that, where claimant is shown to have suffered a prior injury to the one complained of, by reason of which there was no practical use of the eye later injured, claimant could not recover for the loss of an eye. Rector v. Roxana Petroleum Corp., 235 Pac. 183, decided by the Supreme Court of Oklahoma.

In this respect the Court said:

"It will be observed from Senate Bill 155, supra, and section 7290, C. O. S. 1921, that the permanent loss of the use of an eye shall be considered as equivalent of the loss of an eye. It follows logically and naturally that, if the claimant had already lost the use of an eye before he entered the service of the respondent, he could not lose the use of it while in such service, and that, since he could not lose the use of an eye while in the service of the corporation, he could not be awarded compensation for its loss.

"The Legislature specifically provided that the loss of the use of an eye and the loss of an eye are equally the same thing. The Workmen's Compensation Law in Oklahoma, in this regard, is unlike such law that has been called to our attention in any other State.

"The Oklahoma Legislature provided for the payment of compensation for disfigurement, and in the instant case there are only two losses that were sustained by the claimant; loss of the value of his services while disabled, and damages suffered because of a permanent disfigurement to the face.

The Industrial Commission, in its order, has made an award to compensate claimant for both of these losses. The Commission allowed him $438 for temporary total disability and $300 for serious and permanent disfigurement of the face. The Industrial Commission tried this matter; observed the extent of the disfigurement caused by the extraction of the eyeball; observed the amount the disfigurement was lessened by the use of a glass eye; and, in their discretion, allowed claimant $300 for disfigurement. Under the amendment to the Workmen's Compensation Law this amount could have been in any sum not to exceed $3,000.

"The question of extent of damages sustained by claimant as the result of disfigurement was definitely outlined by the Industrial Commission. Both sides introduced evidence thereon, and the Commission, after having heard and considered all this evidence, rendered their judgment in the amount above stated, reciting that the same would reasonably compensate the claimant for his loss, and under the well-defined and settled doctrine of this State the decision of the Industrial Commission, as supported by the evidence, is conclusive upon the courts. Booth & Flinn v. Cook, 79 Okla. 280, 193 P. 36."

BAD FAITH IN PURCHASE OF NEGOTIABLE INSTRUMENT.—It has been held that bad faith in taking commercial paper does not necessarily involve furtive motives, for it exists when the purchaser has notice of facts which, if unexplained, would show that he is taking the property of one who owes him nothing in payment of a claim that he holds against someone else. Even if his actual good faith is not questioned, if the facts known to him should lead him to inquire, and by inquiry he would discover the real situation, in a commercial sense he acts in bad faith and the law will withhold from him the protection that it would otherwise extend. Ward v. City Trust Co., 192 N. Y 61.

Mere surmise or suspicion is not sufficient to put a purchaser of commercial paper upon inquiry, Oliner v. Goldenberg, 154 N. Y. Supp., 612, nor is negligence in omitting to take precautions which a prudent man would take. Cheever v. Pittsburgh R. R., 150 N. Y. 59.

In the case of Hess v. Iowa Bankers Mortgage Co. et al., 201 N. W. 91, this question was discussed by the Supreme Court of Iowa. In that case the defendant bank, concededly through fraud, induced plaintiff to subscribe for stock of the corporation to the amount of approximately $63,000, for which plaintiff paid approximately $4,000 in cash and gave his notes for the balance. About one month later the defendant Ulch Bros. State Bank acquired from the Iowa Bankers Mortgage Co. several of the notes held by it. The original subscription of stock contract was rescinded by the court on the ground of fraud, which was clearly established.

In a counterclaim on the notes, brought by Ulch Bros. State Bank, Hess interposed the defense of fraud, and also claimed that Ulch Bros. State Bank had knowledge of such facts and circumstances concerning the transactions for which the notes were given as to make the purchase of the notes by them a purchase in bad faith.

It was held by the Supreme Court of Iowa that this defense, established on the trial, was sufficient to prove that the title of the Iowa Bankers Mortgage Co. was defective and cast upon the Ulch Bros. State Bank the burden of proving that the notes were acquired in due course. On the question of bad faith in the purchase of the paper, the Court held, however, that sufficient circumstances were not shown to impute to Ulch Bros. State Bank "bad faith" within the meaning of the Negotiable Instruments Law. It appeared from the testimony that before purchasing the notes Ulch Bros. State Bank wrote to plaintiff, asking him if the transaction was satisfactory and if the notes would be paid at maturity. This inquiry was answered in the affirmative. It also appeared from the testimony that Ulch Brothers themselves were members of the corporation which defrauded plaintiff, but there was nothing to show that they were active in its management or had any knowledge whatsoever of the fact that it was incorporated for fraudulent purposes or that it was conducted dishonestly.

DEFAMATION BY INADVERTENCE.—Ever since the decision of the House of Lords in the celebrated case of Artemus Jones v. Hultons, Ltd., 1910, A. C. 20, the newspaper world has always found itself under the necessity of running one not inconsiderable risk: a journal may be hit in damages for libel if it publishes, in ignorance and without negligence, a statement which in fact is defamatory of some person whose existence is unknown to it, but who is able to show that the public at large, or those members of it to whom he is personally known, believed the statement to refer to him. There are, however, some limits to this vague liability and Mr. Justice Horridge held that those limits had been reached in the recent case of Shaw v. London Express Newspaper, Limited (Times, 27th inst.), when he withdrew from the jury on the ground that the evidence disclosed no cause of action, a libel suit based on a very curious chain of circumstances. In February, 1924, the Sunday Express published an article entitled "The Mystery Murder of Camden Town," with the subheading "Phyllis Dimmock's Death."

In the body of the article, which dealt with a murder trial once very notorious but now forgotten, an alleged facsimile of a post card received by the dead woman, Phyllis Dimmock, was published; it was addressed to "Mrs. B. Shaw, 29, St. Paul's Road, Camden Town, N.," for it appeared at the trial that the dead woman had been living, as if she were his wife, with a man of that name at the address in question. Now it so happened that recently the plaintiff, a man named Shaw, went to live at this same house; he was quite unaware of its former connection with the murdered woman; he had

nothing whatever to do with the Mr. Shaw with whom she had then been living. Naturally, the publication of the article proved annoying to the plaintiff, who wrote to the paper claiming compensation for the alleged defamation, which, needless to say, was quite unintentional. The paper at once published an apology and explained that the plaintiff was in no way associated with the recipient of the card, but the latter took proceedings for libel.

Notwithstanding the decision in the Artemus Jones Case, supra, Mr. Justice Horridge ruled out as inadmissible evidence tendered to show that the plaintiff had been asked by persons in the neighborhood whether he had had anything to do with the subject-matter of the article; and the learned judge, at the conclusion of the case for the plaintiff, held that in the circumstances the statement complained of could not in law be regarded as defamatory, so that there was no case to go to the jury. For the judge, we need hardly remind readers, decides as a matter of law whether an alleged libel *is capable* of being defamatory, and then, if he decides in the affirmative, the jury decide whether it in fact is defamatory.—Solicitors' Journal (Eng.), May 2, 1925.

THE INCREASING IMPORTANCE OF SPECIAL TAXES*

The most comprehensive and authentic source of recent statistics upon taxation is the forthcoming decennial report of the Federal Census Bureau, entitled, "Wealth, Debt and Taxation, 1923." Preliminary releases of salient features of this report have already been published and have furnished the inspiration for this paper.

In the task of compiling material for the recent survey, the Department of Commerce, in its "instructions to clerks and special agents," followed the classification and terminology employed in the previous government reports in the same field.

Revenue receipts considered with regard to their sources were segregated into two generally recognized grand divisions, viz: "general property taxes" and "special taxes."

*An address delivered before Seventeenth Annual Conference of the National Tax Association, St. Louis, Missouri, September 15-19, 1924.

Special v. General Taxes—The general property tax was defined as "the common designation of the direct tax upon real property, and upon other property when it is apportioned and levied by substantially the methods employed in apportioning and levying taxes upon privately owned real property."

The term "special taxes" in the report referred to was given a limited application, being defined as including "special property taxes" also "other special taxes such as inheritance taxes, income taxes, mortgage registry taxes and taxes on the organization of companies."

"Special property taxes" were further defined as "direct taxes assessed, levied and collected by methods not generally applied to privately owned property." They include (1) all taxes upon the property of corporations based upon the *amount* of corporate stock, corporate indebtedness, or otherwise than upon the valuation of all the corporate property; (2) taxes upon savings banks levied according to deposits; (3) taxes upon life insurance companies according to the valuations of their policies; and (4) all specific taxes upon property, as acreage taxes on land, head taxes on live stock, and tonnage taxes on vessels, and taxes upon grain at a specified amount per bushel.

In the group "special taxes" the Department of Commerce also included, as before stated, inheritance taxes, income taxes, registration taxes on mortgages, privilege taxes on incorporation of companies, and "all taxes of a similar nature not otherwise classified." Under this heading there might logically have been grouped the prolific horde of privilege or business taxes such as tax on franchises, gasoline or consumption taxes and receipts from production or severance taxes.

But the Census Report groups separately "poll taxes" and "business taxes," the latter being defined as taxes "upon business and business activities exacted from persons, natural or corporate, (1) in proportion to the volume of their business,

(2) by reason of the business in which they are engaged, or (3) by reason of some activity which constitutes a part of their business."

Additional major sources of revenues are combined under the head "non-business and license taxes" and described as "taxes other than upon businesses that are exacted primarily for the purpose of regulation and are collected in connection with the issue of so-called licenses or permits," with reference to measureable or assumed benefits conferred upon the licenses. Representative of this class are dog licenses, marriage licenses, building permits and motor vehicle licenses, etc., not to suggest, let us hope, a necessarily progressive series or a natural sequence in which these ultra-modern "satisfactions" are normally demanded—dogs, wedding bells, bungalows and limousines.

The final classification of the Census Bureau is "special assessments" and "special charges for outlay," the former being described as "compulsory contributions levied under the taxing or police power to defray the costs of special public improvements or public services undertaken primarily in the interests of the public."

It is explained that special assessments differ from general property taxes in that they are apportioned according to assumed benefits to the property specially affected by the improvement or assumed benefits to individuals or corporations by reason of the special service performed.

In this paper, however, the terminology of the Census Bureau will not be followed to its ultimate refinements; but the term "special taxes" is used herein in a broader sense, and as comprehending all levies other than that imposed *ad valorem* on property in general. It will, for the purpose of comparative analysis proposed by this discussion, explicitly include taxes for local improvements which confessedly are technically *"special assessments,"* and not *taxes* at all.

General Taxes Found Inadequate—The general property tax originated and found its most suitable application in an agricultural stage of economic growth when the mass of property was tangible and but slightly differentiated. Until within the last fifty years the general property tax was nearly everywhere pre-eminently the source of all public funds.

But beginning about the middle of the 19th century with the impetus given to industrial development by the adoption of the corporate form of business organization, a natural quest arose for the most effective machine to reach this new kind of property, which to such a marked degree was intangible and invisible.

Special taxes had already been devised for banking and insurance companies, the earliest development being in New Jersey in 1910 with a law requiring the president of specified banks to pay into the State Treasury one-half of one per cent on the paid-up capital stock.

The Humble Poll Tax—The obnoxious poll tax centuries ago had been the cause of Wat Tyler's Rebellion, and since 1698 has been unknown on British soil; yet we find it retained as a persistent though inconspicuous revenue feature in forty-three of the American States. There has been a distinct trend, however, to allocate or identify it with the suffrage right, so that in point of practice the $1.00 poll tax has come to be regarded by many as the price of the sovereign right to vote!

Taxes Based on Gross Receipts—In 1862 Iowa adopted a tax on gross receipts of railroads; and the New York Corporation Tax Law of 1880 was a further departure from the old inflexible system. The New Jersey act of 1830 imposed a tax based upon the number of passengers and tonnage of freight transported, which was changed in 1849 to a tax at a fixed percentage of the cost of all roads having a net income of six per cent or more.

The U. S. Supreme Court sustained the Minnesota tax on gross receipts of foreign express companies.[1]

(1) State v. U. S. Express Co., 114 Minn. 346; 131 N. W. 489; aff'd. in 223 U. S. 335; 56 L. Ed. 459; 32 S. C. Rep. 211; 37 L. R. A. (N. S.) 1127.

A conspicuous example of a special tax is that of seven per cent of its gross income imposed on the Illinois Central Railroad, by the Act of 1851. Under this law, the company pays semi-annually to the State of Illinois in lieu of property taxes an amount ranging from $1,000,000 to $1,500,000 a year.

Pennsylvania's special tax on capital stock yielded all-told in 1909 nearly $10,000,000, probably then the most productive single tax levied in any of the States, but surpassed by its 1922 performance of $20,493,882.

The Ultra Modern Gasoline Tax—The tax of four cents per gallon on gasoline, together with the schedule of license fees imposed in Arkansas by the Harrelson Highway Act[2] is yielding during the first year of its operation nearly $5,000,000, or a sum in excess of the entire regular *ad valorem* levy for all State purposes at 8.7 mills, which amounted in 1924 to only $4,691,611.

Consumption Tax on Tobacco Products—The new law imposing a tax on cigarettes and cigars[3] stands to bring to Arkansas around $150,000 a month—a figure astounding indeed to one who was never initiated into the delights of the aromatic weed.

Mortgage Registration Tax—The New York mortgage tax of 1906 levied a recording tax upon mortgages at a low rate (now 50 cents for each $100 of the principal debt), and provided for the exemption of secured debts after the initial payment of the mortgage tax. The New York scheme has been copied with success in several other States, including Kentucky, Acts 1917, Ch. 11, Alabama,[4] Minnesota[5] and Oklahoma,[6] but declared unconstitutional in Kansas.[7]

(2) Act No. 5, approved Oct. 10, 1923, Special Acts 1923, p. 11.

(3) Act No. 4, approved June 30, 1924, Acts 1924, Third Special Session, p. 47.

(4) State v. Ala. Fuel & Iron Co., 188 Ala. 487; 66 So. 169; L. R. A. 1915A, 185; Ann. Cas. 1916E, 752.

(5) Orr v. Sutton, 119 Minn. 193; 137 N. W. 973; 42 L. R. A. (N. S.) 146.

(6) Trustees v. Hooten, 53 Okla. 530; 157 Pac. 293; L. R. A. 1916E, 602.

(7) Wheeler v. Weightman, 96 Kan. 50; 149 Pac. 977; L. R. A. 1916A, 846.

In Maryland a low flat rate is levied on the value of certain securities which under the regular rate applicable to property in general had gone into hiding and escaped the assessor. In 1896 only $6,000,000 of such securities were reflected on the tax books. Under the new law with a fixed rate of 4½ mills on this class of property the assessed valuation began steadily to increase, until in 1919 it amounted to more than $208,000,000.

Newer Forms of Special Taxes—The federal excise tax, a time-honored resort, but which leaped into unparelleled importance as an incident to the World War, showed a total yield of $115,546,248 upon motor vehicles alone for the year 1921. To enumerate the other familiar articles upon which the "miscellaneous tax" has been laid by the Federal Government with impressive crescendo, would unduly burden this discussion and arouse reflections of an exceedingly unpleasant cast.

Inheritance Taxes—The most universal example of special taxes consists of the *inheritance* tax laws now in force in 46 States and the Federal Government, not to mention their astonishing expansion abroad. In 1913 the total yield from this tax was about $26,000,000, or less than one-fifth the sum Great Britain raised from Death Duties in that ominous year from whence the luckless world plunged into the abyss of cataclysmic War. The decade just ended recorded a pyramidal increase in America, so that the latest annual yield of inheritance taxes, $207,000,000, equals eight times the earlier stupendous total of $26,000,000.

The States and the Federal Government are verily in unseemly contest over this disputed source of revenue; and Alabama and Florida are said to be the only States which have steadfastly refrained from leaping into this glittering bandwagon headed towards the side-shows of "easy money."

The rapid increase in the yield of inheritance taxes in the jurisdiction in which this meeting is held (Missouri),

and in several neighboring States, in New York and the Federal Estate tax (which began in 1917), is shown by the following table:

Comparative Inheritance Tax Yields

	1903	1913	1922
Arkansas	$ 302	$ 23,665	$ 308,492
California	290.447	1,586.875	6,344,644
Illinois	503.816	1,612,818	3,367,041
Iowa	147,332	280.733	689,486
Missouri	229,854	479,517	1,374.883
New York	3,303,555	12,153.189	15,431.481
Pennsylvania	1,300.384	2,036,738	11,332,935
Federal Estate Tax.			139,418,846
Total Federal and all States	7,038,684	26,470,964	207,546,905

Income Taxes—The income tax law, while a later development as a state device, bids fair to outstrip the inheritance tax in point of yield. A few examples suffice to show the importance of this source for the latest year for which returns are available:

Comparative Income Tax Yields

Arkansas	$ 250.000
Connecticut	775,000
Delaware	289.000
Massachusetts	12,586,000
Mississippi	38 000
Missouri	2,865 000
Montana	113,000
New York	14,900.000
North Carolina	3,976,000
South Carolina	1,041,000
Wisconsin	4,178,000
Federal Government (5-Yr. Average, 1919-23)	2,672.766,000

Motor Vehicle Taxes—The phenomenal increase in motor vehicle taxes is vividly shown in the following data, prepared by the National Conference Board:

Comparative Yields of Taxes on Motor Vehicles

	1913	1922
Iowa	$717,229	$7.891.366
Michigan	185.392	9,572.857
Illinois	482,866	9,441.775
Wisconsin	187,376	4,791,158
Ohio	396,504	9,981.434
Minnesota	38,834	7.215,121
Indiana	92,386	5,215,923

A recent article in the Chicago Journal of Commerce treats of the increase in gasoline consumption in twenty States having either a gasoline tax law or a gasoline inspection law. The total for the six months ending June 30, 1924, of 946,110,715 gallons compares with 779,449,667 gallons during the corresponding period of 1923, or an increase of 21.4 per cent, while the increase in the single month of June, 1924, over the preceding month of May is 9.3 per cent.

The number of States that do not levy some form of gasoline tax is small, including, as of August 1, Missouri, her four neighbors, Illinois, Iowa, Kansas and Nebraska, and nine others. In Michigan, Iowa and Wisconsin bills passed to impose such taxes have been vetoed by the Governor through the activities of motorists who claimed that they were already excessively burdened, and that the additional taxes on gasoline were not needed to build roads, since this expense is adequately cared for by license fees.

The principle underlying the gasoline tax as a tax upon the privilege of using the commodity as a fuel in motors on the highways of a State, was, so far as I am informed, first ruled in my own State—Arkansas, and as late as 1922,[8] and the principle has recently received the sanction of the highest court of the land.[9]

Severance or Gross Production Taxes—The severance or gross production tax is a development of the past decade,[10] and comparisons with 1913 cannot of course be made. The fact, however, sticks out that an annual $34,500,000 yield has been found from a brand new fountain head, further evidence of the common trend. Round figures for the latest fiscal year include:

Approximate Yield of Production Taxes

Alabama	$ 1,000,000
Arkansas	1,000,000
Louisiana	2,500,000
Minnesota	6 000,000
Oklahoma	8,000,000
Pennsylvania	8 000,000
Texas	5,000,000
West Virginia	3,000,000
Total	$34,500.000

Tax on Insurance Companies—The special tax paid by insurance companies is based in most States upon a percentage of

(8) Standard Oil Co. v. Brodie, 153 Ark. 114; 239 S. W. 753.

(9) Pierce Oil Corpn. v. Hopkins, 282 Fed. 253; aff'd. in 264 U. S. 137; 68 L. Ed. 302; 44 S. C. 251.

(10) Leading cases upholding this form of special tax include: Republic Iron & Steel Co. v. State, 204 Ala. 469; 86 So. 65. Floyd et al. v. Miller Lbr. Co., 160 Ark. 17; 254 S. W. 450. Ark. R. R. Com. v. Stout Lbr. Co., 161 Ark. 164; 255 S. W. 912. Oliver Iron Min. Co. v. Lord et al., 262 U. S. 172; 67 L. Ed. 929; 43 S. C. 526. Re Wolverine Oil Co., 53 Okla. 24; 154 Pac. 362; L. R. A. 1916F, 141. Heisler v. Thos. Colliery Co., 274 Pa. 448; 118 Atl. 394; aff'd., 260 U. S. 245; 67 L. Ed. 237; 24 A. L. R. 1215; 43 S. C. 83. Producers Oil Co. v. Stephens, 44 Tex. Civ. Ap. 327; 99 S. W. 257; Texas Co. v. Stephens, 100 Tex. 628; 103 S. W. 481; Southwestern Oil Co. v. State, 100 Tex. 647; 103 S. W. 489; aff'd. in 217 U. S. 114; 30 S. C. 496; 54 L. Ed. 688. Gulf Refining Co. of La. v. McFarland, 154 La. 251; 97 So. 433. Ark. Natural Gas Co. v. McFarland, 154 La. 266; 97 So. 438.

gross receipts on premiums collected within the State; and the following comparisons reflect the significant growth:

Increase in Insurance Company Taxes

	1903	1913	1922
Arkansas	$ 50,000	$ 220.000	$ 440.000
Michigan	374,299	616,000	1.685.689
Missouri	164,825	624,578	1,547.518
Minnesota	284.573	443,235	1,113.216
Iowa	237,742	390,549	1.096 085
New York	1.166,528	2.104,743	5,052.020
Illinois	311 380	519,869	3,530.121
Wisconsin	460,810	759,556	1,261,533
All States	6,475,540	17,554,971	52,510,117

Finally, as a graphic showing of the steady and resistless increase in the utilization of special taxes for State as distinguished from local requirements, the following table is gleaned from the recent Census report on "Financial Statistics of States, 1922," at page 20:

Percentage of total revenue obtained for state purposes from—

	General Property	All Other Sources
1915	40.6	59.4
1916	37.7	62.3
1917	34.9	65.1
1918	35.6	64.4
1919	35.1	64.9
1922	30.0	70.0

The showing is all the more remarkable because of the retarding influence of the enormous revenue loss due to the abrupt abolition of liquor licenses since the adoption of the Eighteenth Amendment to the Federal Constitution.

Special Assessments—It is impossible in the limits of this paper to adequately treat of that class of special taxes which yields the largest volume of revenue, viz: Collections of "benefit assessments" for local improvements.

Under this head is the enormous revenue supporting the bulk of the rapidly expanding volume of "municipal securities" in recent years so favored through exemption from the Federal Income Tax.

According to a leading text writer,[11] "The State has the general power not only to determine that public improvements shall be made whenever it deems them essential to the health and prosperity of the community, but also to determine to what extent the cost of such public improvements shall be paid by the public at large and what part shall be paid by the property especially benefitted thereby."[12]

The bonds are the direct obligations of special taxing districts created for the purpose of financing local improvements such as sewers, streets, highways, parks, levees, and for the reclaiming of arid areas through irrigation projects.

The benefit principle is not confined to the financing of permanent improvements, but applies to services as well. For example, Toledo's street lighting bill for 1923 was $218,730, of which the specially benefitted property owners paid $134,658, and the city at large $84,072.

In the domain of special assessments many conspicuous instances of public improvements loom upon the economic horizon which could not have been realized but for this convenient device. A few typical examples may serve to illustrate.

Flood Prevention by Special Taxes—The great flood in the Miami Valley of Ohio in 1913 laid waste what had been a most prosperous community. Fertile lands were ruined by the overflow and populous towns and cities were all but destroyed. As a result of the appalling damage, attention was directed to a means of preventing a recurrence of the great disaster.

The Conservancy Act of Ohio was approved February 17, 1914, and construction of extensive flood control works in the Miami district was financed by means of special assessment bonds issued under authority of that act.[13]

The Engineering-News Record for November 16, 1922, in describing the method of appraisal of the flood protection bene-

(11) Judson on Taxation, Sec. 395.

(12) The principle of "betterments" as a basis for special taxation, usually called special or local assessments, is supported by an array of judicial precedent, including: Norwood v. Baker, 172 U. S. 269; 43 L. Ed. 443; 19 Sup. Ct. 187. French v. Barber Asphalt Paving Co., 181 U. S. 324; 45 L. Ed. 879; 21 Sup. Ct. 625. Myles Salt Co. v. Iberia & St. M. Dr. Dist., 239 U. S. 478; 60 L. Ed. 392; 36 S. C. 204, reversing 134 La. 903; 64 So. 825; L. R. A. 1918E. 190. Re Madera Irrig. Dist. Bonds, 92 Calif. 296; 28 Pac. 272, 675; 14 L. R. A. 755; 27 Am. St. Rep. 106.

(13) The district was established June 28, 1915. The law was upheld in County of Miami v. City of Dayton, 92 Ohio State 215; 110 N. E. 726; and again sustained by the U. S. Dist. Court on Aug. 9, 1917, in Orr v. Allen et al., 245 Fed. 486; aff'd. 248 U. S. 35; 63 L. Ed. 109; 39 S. C. 23.

fits and damages, emphasized two conditions, viz: (1) the total benefit must warrant the expenditures, and (2) equitable distribution must be accomplished.

The appraisal work was an undertaking of great magnitude. About 77,000 pieces of property had to be dealt with, distributed along 110 miles of river valley. In about one-fifth of the cases damages were involved; that is, property must need be taken in whole or in part for the construction of flood protection works. The other four-fifths of the pieces were affected by benefits only. Whether damage or benefit the amount had to be determined separately for each parcel. This was accomplished by compiling a complete outlay of engineering and property data by means of field surveys, and the determination of flood outlines, real estate, maps, etc.

It was held that the elimination of the flood risk would benefit cities and counties as well as the individual pieces of property. Consequently, benefit appraisements were required for cities and counties as units. In determining the benefit to counties, for example, it was found that much county property had been submerged and temporarily put out of use during the flood. The values with and without protection of this property were estimated and the difference taken as the measure of benefits.

When a flood paralyzes industry as it did in the Miami Valley, it affects every human being living in the community and impairs the value of every piece of property within its boundaries. Thus, the protection project safeguards the assets of the city and assures its future growth and prosperity. As a direct result traceable to the 1913 flood, there were numerous cases of pauperism, sickness and insanity, and the elimination for the future of such evils as these undoubtedly constitutes a direct and special benefit to the community.

Adaptation to Bridges and Highways—The New York State Bridge and Tunnel Commission is the authority under which there is now being constructed under the Hudson River a vehicular tunnel at an estimated cost of $14,335,000.

From the financial statement of experts, the cost of this tunnel will be amortized in eleven years and at the end of twenty years there will be an accrued surplus to each State of $33,635,000 in addition to securing the tunnel without cost to the people.

The improvement will pay for itself through the tolls to be levied upon traffic, this plan amounting in the long run to a "special tax," since financing by means of tolls is but another method of paying for public improvements.

A remarkable case of a special improvement on an ambitious scale is that of the Moffat Tunnel penetrating James' Peak in Colorado. The Moffat Tunnel Improvement District was created under an Act of the Special Session of the General Assembly called by Governor Shoup in 1922, which also enacted a flood control law, following the precedent of the Ohio Conservancy Act.

Says Mr. Erskine R. Myer, attorney for the Moffat Tunnel Commission:

"The general principles underlying the Moffat law are simple. The legislature of any State has what is known in legal parlance plenary power. In other words, the legislature may do any act which the people of the State may do if that act is not prohibited by the Constitution. Therefore, the legislature had the right and exercised it in the passage of this bill to form a special improvement or tax district for the purpose of constructing a public improvement, to-wit: The Moffat Tunnel.

"It was called 'an avenue of communication,' and the purposes to which it could be put were railroad uses, transportation of water, transportation of vehicles, for the transmission of power, and for telephone and telegraphic messages."

The legality of the project was put to judicial test. The law has been held con-

stitutional by the United States Supreme Court.[14]

Financing of Irrigation and Drainage via Special Taxes—The irrigation districts of the West constitute valuable public facilities financed under the plan of special improvement taxes.

In the California procedure, typical of the system throughout the country, organization is perfected by the filing with the Board of Supervisors of the particular county of a petition of landholders within the boundaries of the proposed district. Thereupon an election is held to determine whether the district shall be created and for the election of directors.

Provisions for the issuance of bonds usually appear, and in most cases bonds can only be issued upon an affirmative vote of the electors within the district.

Promotion of Civic Pride Through Esthetic Development—Another Colorado project of moment is that authorizing the Denver Civic Center and the several beautiful parks within and adjacent to the "Queen City of the Plains." Assessment for the cost of acquiring land for these States and for the Civic Center was made against all the real estate in each Park District of the city which was divided into thirty-eight zones. The assessments ranged from $3.00 to $1100 per lot. The boundaries of the zones and the amount apportioned to the several lots was fixed by the Park Commission acting as an assessment board.

We have briefly noted the increasing volume of revenue derived each year from what has been termed "special" sources in contradistinction to the mass of property in general, which remains the chief dependence because of its familiar occurrence in every taxing district.

Special Sources May Aid, but Not Supplant the General Levy—The fact sought to be emphasized in this review is that "special" sources of revenue are indeed a real and eligible dependence as a supplemental and auxiliary resource; but by no means can they be relied upon, at this stage of economic progress, as a *substitute* for the general property tax.

Incomes, polls, inheritance, franchises, excises, production taxes, consumption taxes and the rest of the "awkward squad" have through dire need been widely requisitioned, and they are obviously registering progress. But to the old guard—the well-marshalled forces under command of old Gen. Property Tax, must we look for years to come for the indispensable sinews of war.

In the face of a dismal prospect of overpopulation and race-decline, as forecasted by certain eminent scientists, Arthur Brisbane, who is more of an economist than a dreamer, recently declared that the State of Texas alone could, under intensive cultivation, feed the earth's entire present population of 1,600,000,000. And far from race-extinction through sheer pressure of existence, he ventures the prediction that the next centennial will find in this country "a thousand million human beings, infinitely happier, richer and better off in every way than any population that has ever lived."

Rational Development in Prospect—Indeed, it does not take a Brisbane, a Bellamy or a Wells to discern the universal shifting of world affairs from the abstract to the concrete, from the general to the special. The decennium now just receding into the fateful scroll of history has recorded tremendous changes, for the most part we trust, conducive to the amelioration of mankind. What has been wrought during these aptly termed "eventful years" is but a harbinger of a rational and sure development which lies immediately ahead. And in no field is there greater need for broad as well as intensive cultivation than in the hitherto neglected domain of public finance.

The general property tax remains a sturdy survivor of conditions which brought it forth long in advance of the

(14) Milhelm v. Moffat Tunnel Imp. Dist., 72 Colo. 268; 211 Pac. 649; aff'd. in 262 U. S. 710; 67 L. Ed. 1194; 43 S. C. 694.

present era of Twentieth Century civilization. It is still the backbone of the revenue resources of the local community in all the States. Yet, as we have seen from this cursory survey there is an unmistakable craving for new and specific subjects of taxation—definite sources of public funds that bear more or less direct relation to the governmental function to which the funds so sought are to be applied.

Taxes to Fit Special Governmental Functions—The allocation of special taxes to special functions, such, e. g., as the motor tax to the maintenance of highways,[15] will not only identify in the public mind the relative desirability of our various public necessities, but the appropriate method of their financing as well. Moreover, it will automatically release *pro tanto* property in general thus paving the way for just recourse to an *ad valorem* levy for funds to meet expenses of rural localities whose revenue sources are obviously limited and few.

It is unwise to close our eyes to proposed innovations upon the ground that safety lies only in conservatism. A broader patriotism as well as obedience to the scriptural injunction will prompt us to "prove all things, and hold fast that which is *good.*"

Finally, there is a certain degree of safety in "*following the crowd*" even in taxation schemes. Witness the gasoline tax, which was at first condemned on the pretext that a consumption tax would be futile since its successful evasion would require merely crossing the state line to fill one's tank at a non-tax station. But the rapid spread of the new device soon made that argument obsolete. Legislators everywhere seemed to revive in riotous refrain, the ditty of a generation ago:

"There's no use talking, no use talking;
"It's just so everywheres.
"If you do as the folks of the fashion do,
"You're bound to put on airs!"

Little Rock, Ark. GEORGE VAUGHAN.

(15) According to Mr. John E. Walker, former tax advisor to the U. S. Treasury, 36.3 per cent of the $337,546,248 collected as special motor vehicle taxes in 1921, was available for highways.

INTERSTATE COMMERCE—INTERFERENCE WITH

PEOPLE v. YAHNE

235 Pac. 50

(Supreme Court of California. March 28, 1925)

Auto Stage and Truck Transportation Act (St. 1917, p. 330) requiring transportation companies to obtain from railroad commission a certificate of public convenience and necessity as condition precedent to use of highways is invalid as against one who is engaged solely in interstate commerce, as an unconstitutional invasion of field reserved by commerce clause.

H. L. McAllister, of San Francisco, for appellant.

U. S. Webb, Atty. Gen., and Wm F. Cleary, Deputy Atty. Gen., for the People.

Carl I. Wheat and Woodward M. Taylor, both of San Francisco, for Railroad Commission.

PER CURIAM. Defendant herein was accused by information of a misdemeanor in violating the provisions of section 5 of the Auto Stage and Truck Transportation Act (Stats. 1917, p. 330, c. 213). The violation charged consisted in the operation of an auto stage for the transportation of persons for compensation as a common carrier on the public highways of this State and over a regular route, without first having obtained from the railroad commission, as provided for by the act, a certificate declaring that public convenience and necessity required such operation. This appeal is from the judgment of conviction. Defendant was engaged in the business of transporting passengers for hire from San Francisco, California, to Portland, Oregon, but he neither received nor discharged any passengers at intermediate points. He was engaged, therefore, solely in interstate transportation. As transportation is commerce, he contends that, inasmuch as he was engaged solely in interstate commerce, the State of California has no jurisdiction, through its railroad commission, over the transportation of persons or property for compensation upon the highways of this State, when such transportation is solely of an interstate character. He asserts, therefore, that he is not required and cannot be compelled to obtain from said commission the certificate of convenience and necessity provided for in the act in question, for the reason that such requirement and compulsion would constitute the imposition of a burden upon interstate commerce such as is beyond the power of the several States under the provisions of the federal Constitution and statutes.

(1, 2). The question thus presented is one arising under the federal Constitution and the laws of Congress enacted in pursuance thereof, as to which the decision of the Supreme Court of the United States is the ultimate authority. Estate of Romaris, 191 Cal. 740, 745, 218 P. 421. At the time of the trial of this case in the court below and up to the time when the decision of the district court of appeal herein became final, the Supreme Court of the United States had rendered no decision upon the precise point involved herein, but since then that court has rendered two decisions which in our opinion are determinative of the present case. Buck v. Kuykendall (No. 345, Oct. term, 1924), 45 S. Ct. 324, 327, 67 L. Ed. —, and Bush & Sons Co. v. Maloy et al. (No. 185, Oct. term, 1924, decided March 2, 1925), 45 S. Ct. 326, 327, 67 L. Ed. — Those decisions hold that while appropriate state regulations adopted primarily to promote safety upon the highways and conservation in their use may not be obnoxious to the commerce clause where the indirect burden imposed upon interstate commerce thereby is not unreasonable, nevertheless a statute whose primary purpose is not regulation with a view to safety or to conservation of the highways, and which determines not the manner of use, but the persons by whom the highways may be used, is in effect a regulation of commerce and an unconstitutional invasion by the State of a field reserved by the commerce clause for federal regulation. Under these decisions we see no escape from the conclusion that the provisions of the Auto Stage and Truck Transportation Act, supra, which require transportation companies as therein defined to apply for and obtain from the railroad commission a certificate of public convenience and necessity as a condition precedent to the use of the highways of the State, are invalid as against one who is engaged solely in interstate transportation.

The judgment is reversed.

NOTE—*Statute Interfering with Operation of Busses in Interstate Commerce, Void.*—Laws Wash. 1921, p. 341, § 4, prohibiting use of state highways by busses transporting passengers for hire over regular routes without certificate from director of public works, and prohibiting issuance of certificate where territory is adequately served, held violative of commerce clause of the United States Constitution, in so far as it prohibited operation of bus between point in State and point in other State, for which certificate had been denied because of adequacy of existing facilities over highways constructed with federal aid. Buck v. Kuykendall, 45 Sup. Ct. 324.

Laws Md. 1922, c. 401, § 4, prohibiting common carriers of freight by motor vehicle from using public highways over specified routes without permit from Public Service Commission, and giving commission discretion in the matter of granting such permits, held violative of commerce clause, in so far as it prohibits operation, in interstate commerce of trucks over state highways without such permit, even though highways were constructed without federal aid. George W. Bush & Sons Co. v. Maloy, 45 Sup. Ct. 326.

BOOK REVIEW

FREEMAN ON JUDGMENTS

The Bancroft-Whitney Co., San Francisco, have just issued the Fifth Edition of the well-known work of Freeman On Judgments. The original work was by A. C. Freeman, and the Fifth Edition was revised and greatly enlarged by Edward W. Tuttle. The First Edition of this work was published in 1873, and the last edition previous to the present one was published in 1892. The present edition is in three volumes, bound in buckram.

For nearly half a century this work has held a recognized position as one of America's standard law books. Abraham Clark Freeman ranks high among the few who have really enriched the literature of the law, and this is his greatest achievement.

The revision of Mr. Freeman's work has not consisted in the mere citation of later cases. Text and notes have been revised and expanded in the light of the modern authorities, although the work still retains throughout the impress of Mr. Freeman's talented authorship. This edition contains about twice as much matter as the Fourth Edition, and several times as many cases are cited. There is a table of cases, and an unusually full index makes reference certain and easy.

The new Declaratory Judgment Laws, adopted in many States, form a chapter of unusual interest, with references to decisions of the courts of England, where those laws have long prevailed.

The editor of the Fifth Edition is Mr. Edward W. Tuttle, of the California Bar, and a member of the publishers' editorial staff. His long experience as a law writer qualifies him for this important undertaking.

To show precisely the character and scope of the work, the table of chapters is set out following:

I. Definitions and Classifications.

II. Rendition and Entry of Judgments.

III. Entry Nunc Pro Tunc.

IV. Amending Judgments.

V. Judgment-Roll or Record.

VI. Vacating Judgments.

VII. Collateral Attack.

VIII. Persons Affected by Judgments.

IX. Lis Pendens.

X. Merger or Former Recovery.

XI. Judgment as an Estoppel.

XII. Application of Estoppel to Particular Proceedings and Issues.

XIII. Judgment Lien.

XIV. Judgments as Evidence.

XV. Assignment of Judgments.

XVI. Actions Upon Judgments.

XVII. Scire Facias.

XVIII. Pleading Judgments.

XIX. Satisfaction of Judgments.

XX. Reversed Judgments.

XXI. Relief in Equity from Judgments and Decrees.

XXII. Judgments of Courts Not of Record.

XXIII. Judgments by Default.

XXIV. Judgments by Confession and Consent.

XXV. Declaratory Judgments.

XXVI. Sister State and Federal Judgments.

XXVII. Foreign Judgments.

XXVIII. Judgments in Rem.

XXIX. Attacks on Judgments by Habeas Corpus.

Old Colored Mammy: "Ise wants a ticket fo' Florence."

Ticket Agent (after ten minutes of weary thumbling over railroad guides): "Where is Florence?"

Old Colored Mammy: "Sitting over dar on de bench."—Exchange.

Mose: "Say, Sam, how you all gettin' on with that theah saxophone of youahs?"

Sam (slowly and sadly): "Mose, ah can't just unnerstan' it. Ah blows in de sweetes' noises you evah heered, but the mos' hell of a blah always cum out th' othah end."

To Elbert H. Gary, head of the United States Steel Corporation, is credited the most apt reply to a question of stock value.

"Do you think stocks will go up or down," a woman once asked him.

"Yes," was the answer, "I think they will. They rarely stand still, and they can't go sidewise."

The following incident gave much enlivenment to that session of the Iowa State Bar Association, held at Des Moines, Iowa, on the 21st day of June, 1924:

Judge Stevens, of the Supreme Court, and the retiring president of the Iowa State Bar Association, likes a good laugh almost as much as he appreciates a fine legal argument. He had delivered a scholarly address to the association on Thursday, and Friday afternoon he was relaxing.

The lawyers had taken luncheon at the Wakonda Club grounds, when he was handed the following note by Frank Wisdom, of Bedford, Iowa:

"Will the party who found the package left on the seat at the theater return it to the secretary of this association or deliver it at room 1104, Savery Hotel."

The Judge learned that it contained a new shirt.

The afternoon session was soon called and perhaps a thousand attorneys had gathered to listen to the address of Honorable James W. Wilkerson, United States District Judge of Chicago. After some preliminaries were disposed of President Stevens lifted his hand to secure perfect stillness and then announced in a voice that penetrated to every ear in the hall:

"Frank Wisdom has lost his shirt."

When the furor had subsided, that gentleman attracted the attention of the chair and announced:

"Mr. President: You have occasioned more noise over the loss of this one shirt than I made over the loss of one whole suit recently in your court."

This was greeted with still greater cheering and when it subsided, Henry L. Adams, of Des Moines, late president of the association, was on his feet inquiring of the chair:

"How long will this shirt tale last?"

No one undertook to answer. A day later the article of apparel was returned to the owner with the admonition:

"Now keep your shirt on."

DIGEST

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Army and Navy**—Murder in Foreign Country.—Soldier who, while accompanying expedition into Mexico in 1916, killed a fellow soldier, held triable by court-martial under ninety-second article of war (Comp. St. § 2308a), notwithstanding an actual state of war did not exist, nor would such ruling be altered if article of war omitted limitation as to place.—Ex Parte Johnson, U. S. D. C., 3 Fed. (2d) 705.

2. **Attorney and Client**—Attorney's Fee.—Where attorney who agreed to prosecute action for contingent fee and to pay costs and disbursements moved unsuccessfully to vacate order requiring security for costs, knowing that client was nonresident, he was not entitled to compensation when action was dismissed, and judgment for costs entered against his client.—Catts v. Harft, N. Y., 208 N. Y. S. 446.

3.——Power of Court.—Although courts of general jurisdiction have inherent power, in view of Comp. Laws 1917, §§ 316-349, to disbar and suspend attorneys at law, yet that power may be controlled and right to disbar or suspend regulated by Legislature.—Higgins v. Burton, Utah, 232 Pac. 914.

4. **Automobiles**—Contributory Negligence.—Before automobile driver can recover damages from collision with another car which, because unregistered, constituted a nuisance on highway, he must show his own freedom from negligence directly contributing to that damage.—Brown v. Alter, Mass., 140 N. E. 691.

5.——Contributory Negligence.—Where plaintiff did not know that driver of automobile in which he was riding, and which collided with telephone guy pole, was unfamiliar with road, another was riding beside driver and warned him of dangerous curve, and it was not apparent that if plaintiff had been awake he could have prevented accident, plaintiff held not guilty of contributory negligence as matter of law because he was asleep, or because he did not warn driver of such curve before starting on journey.—Chesapeake & Potomac Telephone Co. v. Merriken, Md., 128 Atl. 277.

6.——Railroad Crossing.—In action by guest in automobile against railroad company for injury sustained in collision with train, instruction that if negligence of driver was sole cause of collision defendant would not be liable, and that such negligence would be sole cause if it would have produced collision without defendant's negligence, and that if defendant's negligence was one of concurring causes producing collision but for which collision would not have occurred it was proximate cause making defendant liable, and that if collision would have occurred if defendant had not been guilty of negligence not to find its negligence proximate cause of collision, was proper.—O'Brien v. Chicago, R. I. & P. Ry. Co., Iowa, 202 N. W. 778.

7.——Son as Agent.—In action against owner of automobile for injuries caused while car was driven by son, finding that son was her agent held sustained by admissions in evidence that he was on way to demonstrate car to prospective purchaser.—Hynes v. Wilson, Md., 128 Atl. 70.

8. **Bankruptcy**—Conversion.—Claim for conversion of automobiles and appropriation of the proceeds of their sale by bankrupt, held within the exception of Bankruptcy Act, § 17, cl. 2 (Comp. St. § 9601), of liabilities for willful and malicious injuries, not released by discharge in bankruptcy, so that action thereon should not be stayed.—In re Brier, U. S. D. C., 3 Fed. (2d) 709.

9.——Conveyance by Bankrupts.—A conveyance of land by bankrupts, brothers, to their mother, more than a year prior to bankruptcy, and at a time when their indebtedness was very small outside of two claims, which were otherwise secured, held, on the evidence, to have been made in good faith, and not invalid, as in fraud of creditors.—Ward v. Scales, U. S. C. C. A., 3 Fed. (2d) 261.

10.——Exemptions.—The matter of exemptions is left by Bankruptcy Act, § 6 (U. S. Comp. St. § 9590), to state laws. Under Compiled Oklahoma Statutes 1921, §6727, life insurance policies payable to or for the benefit of a married woman are exempt from his debts, and the proceeds of such a policy do not pass to his trustee in bankruptcy.—Brown v. Home Life Ins. Co., U. S. D. C., 3 Fed. (2d) 661.

11.——Mortgage.—Under Rev. Gen. St. Fla. 1920, § 3836, providing that any instrument given to secure the payment of a debt is a mortgage, and if on personal property is void as against subsequent creditors, unless duly recorded or the mortgagee is given possession of the property, a lien reserved by a contract for sale to bankrupt of a stock of merchandise, which was not acknowledged nor recorded prior to four months before the bankruptcy, is void as against the creditors, whose claims arose subsequent to the sale.—In re Farmers' Co-Op. Ass'n of Marion County, Fla., U. S. D. C., 3 Fed. (2d) 708.

12.——Payment While Insolvent.—Payment to stockholders by bankrupt corporation, while insolvent, being, under Stock Corporation Law N. Y., § 15 a, b, c, unlawful and "void," and so of no effect, did not take the debt out of the statute of limitations.—In re German-American Improvement Co., U. S. C. C. A., 3 Fed. (2d) 572.

13.——Replevin.—Action in replevin, with count in trover against bankrupt, on charge that he had purchased and obtained possession of goods by fraudulent representations, pending at the time of filing of the petition in bankruptcy, not being founded on a dischargeable claim, in view of Bankruptcy Act, § 14 (Comp. St. § 9598), is not within section 11a, providing for stay of certain suits pending at time of filing the petition.—In re Braun, U. S. C. C. A., 3 Fed. (2d) 247.

14.——Set-Off.—Member of stock exchange who, to close contracts of insolvent member, purchased stocks sold short for such member and sold stocks purchased on margin for him, held, under G. L. c. 137, § 4, c. 231, 31, and Bankruptcy Act, § 1, par. 11, §§ 63, 68a (Comp. St. U. S. §§ 9585, 9647, 9652), entitled to set off balance remaining in his hands against overdue notes of such insolvent member.—Brickley v. Wrenn, Mass., 146 N. E. 797.

15. **Banks and Banking**—Letter of Credit.—Letter of credit, issued by bank on buyer's behalf for consideration, is binding on bank without acceptance by seller.—Lamborn v. National Park Bank, N. Y., 208 N. Y. S. 428.

16.——Indorsement.—Draft transmitted for "collection and returns" creates relation of principal and agent, and within itself is not declaration of trust respecting funds involved, but indorsement for "collection and credit" indicates relation of debtor and creditor.—Nyssa-Arcadia Drainage Dist. v. First Nat. Bank, U. S. D. C., 3 Fed. (2d) 648.

17.——Letter of Credit.—Bank, issuing letter of credit to purchaser of goods, and intrusting it to such purchaser for delivery to seller, is bound on seller's acceptance of it, regardless of letter which it sends directly to seller stating different terms, nor is seller bound to acknowledge such letter.—National Wholesale Grocery Co. v. Mann, Mass., 146 N. E. 791.

18.——Sight Draft.—Where a buyer of hogs issued its checks to seller in payment, and then deposited with defendant bank in its general account, sight drafts covering shipments of the hogs to others, proceeds in defendant bank of such sight drafts held not trust funds out of which seller was entitled to realize payment of unpaid checks given by buyer in payment of hogs.—Ward Commission Co. v. Sioux Falls Nat. Bank, Iowa, 202 N. W. 829.

19.——Stock Ownership.—Generally, real and not apparent owner of bank stock is liable for assessments thereunder.—Chapman v. Pettus, Tex., 269 S. W. 268.

20. **Bills and Notes**—Exchange on Draft.—That drafts drawn on defendant bank called for "exchange and collection charges," while bank's telegram agreeing to honor drafts did not mention such charges, did not relieve bank from liability on drafts, where course of dealing between parties showed that drafts were paid without exchange, especially as drafts being drawn on and payable at defendants' bank, there would be no exchange. —Muentzer v. Los Angeles Trust & Savings Bank, U. S. C. C. A., 3 Fed. (2d) 222.

21. **Brokers**—Agent's Fee.—Where a real estate agent produced a purchaser able to buy, who was accepted by the vendor, with whom he entered into a contract, but afterwards defaulted and settled with the vendor by the payment of a sum of money as damages for his breach of the contract, the agent's commission under his contract with the vendor was earned, notwithstanding it was stipulated to be paid at the time of passing title, which did not pass, because the contract of settlement substituted payment of damages to the vendor, in the place of the purchase money stipulated in the contract of sale and purchase, which latter contract was brought about by the agent's services.—Dermody v. New Jersey Realties, N. J., 128 Atl. 265.

22. **Carriers of Passengers**—Mail Clerk's Rights. —Where railway mail clerk was injured by violence with which locomotive struck car, his rights as passenger held not taken from him by fact that car which he entered to perform his regular duties had not yet been switched into regular train.—Pittsburgh, C., C. & St. L. Ry. Co. v. Jones, Ind., 146 N. E. 864.

23. **Commerce**—Attachment of Car.—Where the right sought to be enforced in the state court by attachment, upon the ground of the non-residence of the defendant, is the right of a shipper in interstate commerce to hold the initial carrier by virtue of the Carmack Amendment to the Interstate Commerce Act (U. S. Comp. St. §§ 8604a, 8604aa), liable for loss or damage to goods in transit by a connecting carrier, and the attachment is levied upon an empty freight car belonging to the carrier, found within the territorial jurisdiction of the state court no federal policy is violated, nor is any unnecessary burden placed upon interstate commerce by the attachment and levy, and no right of the carrier which can be asserted in defense to a suit against it under such act of Congress can in any way be impaired or rendered ineffectual by the carrier's being forced to defend as a defendant in the attachment proceedings. The only burden resting upon the defendant is the physical inconvenience of making a defense in a foreign jurisdiction, which inconvenience attaches to all non-residents whose property has been levied on by attachment.—Southern Pac. Co. v. Di Cristina et al., Ga., 127 S. E. 151.

24.——Excise Tax.—Under a state statute providing for the levy of an excise tax on foreign corporations doing business in the State, assessed on such proportion of their authorized capital stock as represents the property owned and used and the business done in the State, where a manufacturing corporation has all of its property in the State, where it sells its product, some to residents of the State, but the greater part to purchasers residing in other States, including the latter sales in computing the tax imposes a direct and substantial burden on interstate commerce, and is authorized and unlawful.—Air-Way Electric Appliance Corporation v. Archer, U. S. D. C., 3 Fed. (2d) 669.

25.——Taking Orders.—The taking of orders in one State for the purchase or sale if a commodity on an exchange in another State, where the contracts are made and to be executed, does not constitute "interstate commerce."—Fenner v. Boykin, U. S. D. C., 3 Fed. (2d) 674.

26. **Contracts**—"Accepted."—Word "accepted," subscribed on option, in view of statement therein that it was memorandum of writer's understanding of conferences, "subject to immediate acceptance," held mere acceptance of correctness of option, and not agreement to exercise option.—Carpenter v. Foundation Co., N. Y., 208 N. Y. S. 327.

27.——Signing Before Reading.—It is the duty of one who enters into a contract to read it before signing it, and if he signs it before reading it he is bound by its terms, unless his signature was obtained through fraud or misrepresentation, or he was not afforded a reasonable opportunity to read it before signing it.—E. R. Spotswood & Son v. La Fayette-Phoenix Garage, Ky., 269 S. W. 514.

28.——Unenforceable.—As a general rule, a contract cannot be enforced by or against one not party to it.—Crane Ice Cream Co. v. Terminal Freezing & Heating Co., Md., 128 Atl. 280.

29. **Corporations**—Accommodation Payment.—A business corporation in general has no power to execute obligations for the payment of money, or to pledge its assets, as an accommodation to its officers, stockholders or others.—Heidler v. Werner & Co., N. J., 128 Atl. 237.

30.——Dividends.—Where corporation, owing accumulated dividends on preferred stock, adopted reorganization plan pursuant to which non-par value second preferred stock was issued and offered to owners of existing preferred stock who would release dividends in arrears, and where directors subsequently voted to pay a cash dividend on preferred stock, preferred stockholders, who had not agreed to accept the second preferred stock, held not entitled to be paid accumulated dividends in full before other preferred stockholders shared in dividend.—Thomas v. Laconia Car Co., Mass., 146 N. E. 775.

31.——Foreign.—Code 1924 §§ 8600, 8601 (Acts 37th Gen. Assem. c. 354), providing for the licensing or issuance of permits to foreign corporations to do business within the State, does not domesticate such corporations.—Cumberland Presbyterian Church v. Burbank, Iowa, 202 N. W. 834.

32.——Joint Control.—Agreement between managing officer and director for joint control of corporation, providing that any stock purchased by either should be for their joint benefit, held not to survive either party, but was personal, and did not prevent either from selling his stock to third persons.—Cole v. Levy, N. Y., 208 N. Y. S. 481.

33. **Covenants** — Building Restrictions.—Where deeds conveying lots in one portion of subdivision prohibited more than one residence thereon, but lots in another portion were conveyed without such restrictive covenant and were used for railway, business, apartment house, and garage and stable purposes, use of a lot in such portion for apartment house purpose held not violative of covenant restricting use to stable or residence purposes.—Saratoga Building & Land Corp. v. Roland Park A. S. Co., Md., 128 Atl. 270.

34.——Building Restrictions.—Change of residence district into one for business purposes held not to make ineffective covenant not to erect buildings on adjoining servient estate without consent of owner of dominant estate.—Finch v. Unity Fee Co., N. Y., 208 N. Y. S. 369.

35. **Damages** — Improper Instructions.—Instruction that in arriving at amount of plaintiff's damages jury might take into consideration certain elements which plaintiff might sustain as a direct result of his injury, "in all not to exceed a certain sum," held improper to extent of quoted words.—Hanks v. St. Louis-San Francisco R. Co., Mo., 269 S. W. 404.

36. **Guardian and Ward**—Furnishing Goods.—Representations pertaining to future acts to pay for merchandise furnished, made without intent to fulfill them, held sufficient to sustain action in fraud.—Hancock v. Blumentritt, Tex., 269 S. W. 177.

37. **Insurance**—Accidental Injury.—Policy insuring against loss from liability for accidental injuries relates to causes of action for damages in favor of injured person against insured, and does not cover contract claims against insured to pay for care and treatment of injured person.—Cohen v. Employers' Liability Assur. Corporation, Limited, of London, England, N. Y., 208 N. Y. S. 452.

38.——Agent's Knowledge.—Agent's knowledge of insured's bad health held not imputable to insurers, against whom he perpetrated legal fraud in filling out and signing application.—Judd v. Lubbock Mutual Aid Ass'n No. 2, Tex., 269 S. W. 284.

39.——Authority of Attorney in Fact.—Complaint by attorney in fact for automobile reciprocal insurers who had paid loss held not to show plaintiff's authority to sue tort-feasor responsible for collision.—Underwriters' Exch. v. Indianapolis Street Ry. Co., Ind., 146 N. E. 860.

40.——Changing Beneficiary.—Where a policy of insurance on the life of the husband is payable to his wife, without right in husband to revoke appointment of beneficiary and to name another in her stead, no such right exists; the policy in such case being the wife's absolute property over which the husband has no control.—Henrich v. Prior, Ind., 146 N. E. 865.

41.——Dishonor of Check.—Statement in letter notifying insured that check given for cash premium had been dishonored, and demanding return of policies, "These policies will become null and void five days from receipt by you of this notice," held at most a promise without consideration to insure for five days, and not binding.—Ratliff v. St. Paul Fire & Marine Ins. Co., Ky., 269 S. W. 546.

42.——Double Indemnity.—Policy of life insurance providing for double indemnity, if insured died from accidental means for which an additional premium was paid, held not "other insurance covering same loss" as policy insuring against accidental death.—International Travelers' Ass'n v. Gunther, Tex., 269 S. W. 507.

43.——Liquor Still Loss.—The operation by the vendee of a still for the illicit manufacture of intoxicating liquor, and the use of an oil stove to heat the room where the mash is kept, in the house insured, do not defeat a recovery by the vendor of the amount of a loss caused by a fire set by the stove, unless it is shown that the vendor had knowledge of the acts of the vendee.—Kierce v. Lumbermen's Ins. Co., Minn., 202 N. W. 730.

44.——Military Service.—Where insured was wounded in battle, and his leg was amputated, and he later died of diphtheritic infection of the amputation stump, together with abscesses, bronchopneumonia, and peritonitis, death was caused by wounds received in battle while engaged in military service in time of war, within provision of life insurance policy limiting liability to cash surrender value in case of such death.—Lofstead v. Bank Savings Life Ins. Co., Kan., 234 Pac. 50.

45.——Negligence.—Because temptation to negligence may probably result from insurance policy, it cannot be said that policy necessarily begets negligence, so as to be against public policy.—Fidelity & Deposit Co. v. Moore, U. S. D. C., 3 Fed. (2d) 652.

46.——Notice of Damage.—Where a policy of fire insurance on a motor truck provided that, "in the event of loss or damage the assured shall forthwith give notice thereof in writing to this company," and it is shown without dispute that no notice of any kind was given for at least 40 days and no sufficient reason appeared for any delay, the question whether such notice was "forthwith" is a question for the court, and not for the jury.—Macchia v. Scottish Union & National Ins. Co., N. J., 128 Atl. 244.

47.——Oral Notification.—A policy of indemnity accident insurance provided that the assured should give immediate notice in writing to the company, or its authorized agent, of any accident causing loss covered by the policy. In an action upon the policy the assured sought to offer testimony of an oral notification to some one in the office of the company. The court excluded the testimony. This ruling held proper.—Lehrhoff v. Continental Casualty Ins. Co., N. J., 128 Atl. 245.

48. **Joint-Stock Companies and Business Trusts**—Investment Association.—Investment association, operating under a declaration of trust, providing that neither trustee nor cestui que trust should be personally liable as partners, or otherwise, and that trust debt should be a liability against trust fund only, held a corporation, in view of Const. art. 14, § 1, Civ. Code 1913, par. 2099; paragraphs 2096, 2097, 2100, 2101, and amenable to paragraph 2259, governing investment companies; paragraphs 2260, 2264, being inapplicable and not having complied therewith, its sale of stock to defendant was illegal.—Reilly v. Clyne, Ariz., 234 Pac. 35.

49. **Landlord and Tenant**—Repairs.—Where damages are claimed by a lessee on account of the failure of the lessor to have the premises ready for occupancy at the time fixed by the lease for the beginning of the tenancy, the plaintiff cannot recover as elements of damage sums representing clerk hire, and "the expense of paying" a manager employed to take charge of the business which the lessee had anticipated starting from the beginning of his occupancy, where these items are not such as would have been reasonably anticipated by the parties, and there is no averment that the defendant lessors, at the time of the execution of the lease or of the breach, had any knowledge that the plaintiff lessee would incur or had been obliged to incur such expense.—Brockman v. Rhodes, Ga., 127 S. E. 153.

50. **Licenses** — "Manufacturer."—A company, engaged in business of casting iron wheels, held exempt from license tax as a "manufacturer," under Const. 1913, art. 229.—State v. Transmission Machinery Co., La., 103 So. 180.

51.—— "Investment Company." — "Investment company," required to be licensed to sell securities under Blue Sky Law, §§ 3, 4, is one that sells its own stock and does not engage in business of stock selling as a dealer, in view of section 18.—National Bank of the Republic v. Price, Utah, 234 Pac. 231.

52. **Literary Property**—Scenario of Photoplay.—A scenario and synopsis for a photoplay, until dedicated to common use by publication, is at common law private property of the author, and is entitled to protection against piracy by a court of equity.—Thompson v. Famous Players-Lasky Corporation, U. S. D. C., 3 Fed. (2d) 707.

53. **Livery Stable and Garage Keepers**—Loss by Fire.—Complaint in action to recover for value of automobile destroyed by fire while in defendant garage keeper's possession for repairs, merely averring that loss occurred because of defendant's delay in making the repairs, held not to state a cause of action, there being no allegation that fire was direct and proximate result of delay.—Gartrell v. Bend Garage Co., Ore., 234 Pac. 260.

54. **Master and Servant**—Operating Auto Truck.—Where the owner of an automobile truck is employed by the day to operate the truck in hauling men and materials for the employer, and the employee performs all the duties incident to the employment under the direction of the employer, the employee is, when operating the truck pursuant to the employment, the servant of the employer, and is not an independent contractor.—Postal Telegraph-Cable Co. v. Tucker, Ga., 126 S. E. 860.

55. **Municipal Corporations** — Assessments of Churches.—Petition to enjoin city of Savannah from assuming payment out of public treasury of paving assessments of churches and sectarian institutions was not demurrable on ground that relief has already been granted and payment already assumed; petition not seeking to enjoin relief already granted but payment by city of assessments.—Mayor and Aldermen of Savannah v. Richter, Ga., 127 S. E. 148.

56.——Damages from Sewer.—Defense of independent contractor would not apply to damages from city's breach of contract to maintain open ditch across plaintiff's land and consequent overflows since completion of sefer by the contractor.—City of Frankfort v. Jones, Ky., 269 S. W. 326.

57.——Drowning of Boy.—The city of Rosedale determined that the conservation of life, health and property within the municipality would be promoted by straightening the devious channel of a creek which meandered through the town and back and forth into and out of the neighboring town of Kansas City, Mo. Accordingly, under authority of statute, it constructed an artificial channel and tunnel through a hill to lead the stream by a short course directly into the Kansas River. Prior to this diversion and improvement, in times of heavy rain the creek was wont to inundate parts of the city and cause destruction to life and property, and in times of dry weather foul and disease breeding pools existed along its course. The artificial channel and tunnel were designed to correct the evil tendencies of the stream and a complementary sewer project was constructed to eliminate the stagnant pools. Plaintiff's 16-year-old son was drowned in the artificial channel and tunnel while wading and fishing therein with other boys. In an action by the

father to subject the city to liability for the death of his son, it was properly held that the artificial channel was not an attractive nuisance, and that they were constructed and maintained by the city in its governmental capacity; and the ordinary rule was properly applied that, in the absence of statute, no liability can be imposed on a city for negligence in the construction and maintenance of public improvements made by the city to conserve life, health and property within the municipality. —Gorman v. City of Rosedale, Kan., 234 Pac. 53.

58.——Height of Buildings.—Proposed act, authorizing cities to regulate height of buildings, etc., held not "zoning law," but enabling act, delegating police power; "zoning" being regulation by districts of building development and uses of property, and no provision being made for exercise of power of eminent domain.—In re Opinion of the Justices, Me., 128 Atl. 181.

59.——Lease of Property.—Contract of city operating waterworks, under Rev. St. arts. 769, 770, whereby it leased two lakes and surrounding property to a country club, under which lessee was permitted to stock water with fish and to maintain purity of water and beautify premises, held not a surrender of city's governmental powers.—Henrietta Country Club v. Jacobs, Tex., 269 S. W. 137.

60.——Letting Contracts.—That plaintiff in taxpayer's action to enjoin unlawful letting of contract by city is disappointed seeker after contract does not affect his right to injunction.—James Shewan & Sons v. Mills, N. Y., 208 N. Y. S. 381.

61. **Negligence** — Dangerous Appliance. — The manufacturer of an appliance, that will become highly dangerous, when put to the uses for which it is designed and intended, because of defects in its manufacture, owes to the public a duty, irrespective of any contractual relation, to use reasonable care in the manufacture of such appliance, and such duty calls for and requires the exercise of reasonable care in applying reasonable tests to detect defects and deficiencies in the appliance.—Heckel v. Ford Motor Co., N. J., 128 Atl. 242.

62. **Sales** — Annulment. — Where trucks, purchased under an act of sale which contains stipulation that on default in payment of any of purchase-money notes all would become due and exigible, were on default voluntarily surrendered to prevent deterioration from use, held purchaser had but done voluntarily that which he could have been compelled to do, and no cause of action for annulment of sale resulted from such taking.—Eagle Trading Co. v. Abbott Automobile Co., La., 103 So. 182.

63.——Contract in Entirety.—Contract for purchase of "about 100 tons * * * white Java sugar packed in bags. * * * Net landed weights to govern. Adjustment on final weights," held an entire contract, and buyer not entitled to treat each bag as separate purchase and reject part and accept part.—National Wholesale Grocery Co. v. Mann, Mass., 146 N. E. 791.

64.——Delivery.—Seller of nursery stock consisting of prune trees, under contract which provided for delivery in "fall," held entitled to set day for delivery either as early or as late in fall as delivery could be made without injury to health, thrift and vigor of the young trees.—Rosenau v. Lansing, Ore., 234 Pac. 270.

65.——Offer to Buy.—Circular sent out by wholesale poultry dealer inviting trial shipments, and giving range of market prices for date on which it was sent out, held not offer to buy at prices stated, but at market prices when shipment was received. Muhr v. Kalmanson, N. Y., 208 N. Y. S. 447.

66.——Rescission.—General rule that where party gives reason for conduct and decision touching anything in controversy he cannot, after litigation has begun, put conduct on different consideration, was inapplicable to prevent buyer from setting up defects and deficiencies in pistols purchased because of his previous letter assigning different reason for refusal to accept, where defense relied on was urged before litigation and seller had not acted on letter to its detriment.—Georgia Wool Stock Co. v. Transatlantic Clock & Watch Co., Ga., 126 S. E. 902.

67.——Warranty of Food.—In sale of materials intended for use as food, there is no implied warranty, where transaction is between two dealers, or manufacturers and dealer, that article is fit for consumption as food.—Pelletier v. Dupont, Me., 128 Atl. 186.

68. **Seamen**—Foreign Steamship Companies.—Jones Act March 4, 1915, prescribing rights of seamen, enforceable under section 20, as amended by Act June 5, 1920, § 33 Comp. St. Ann. Supp. 1923, § 8337a), in district in which the defendant employer resides or in which his principal office is located, held to authorize actions against corporations organized outside the United States; the "principal office" of such foreign steamship company being principal place where it does business in the United States.—Stewart v. Pacific Steam Navigation Co., U. S. D. C., 3 Fed. (2d) 329.

69. **Statutes**—Discharged Convicts.—Rev. St. 1919, § 12523, requiring all convicts on discharge from penitentiary to leave immediately city of Jefferson and within 24 hours, Cole and Callaway counties, held unconstitutional as a special law for benefit of counties named therein.—Ex Parte Schatz, Mo., 269 S. W. 383.

70.——Inspection of Mattresses.—Act Pa. June 14, 1923 (P. L. 802; Pa. St. Supp. 1924, § 14631a1 et seq.). regulating the making of mattresses, pillows, etc., prohibiting the use of shoddy or second-hand materials therein unless sterilized, and requiring inspection of such articles, held, on motion for preliminary injunction, to restrain its enforcement, not in violation of Const. Amend. 14, or article 1, § 8, cl. 3.—Palmer Bros. Co. v. Weaver, U. S. D. C., 3 Fed. (2d) 333.

71. **Street Railways—Collision.**—Where street car collided with moving van encroaching on track, during loading in violation of statute, and lighted only by lantern and two small improvised lights, corroborated evidence being that motorman did utmost to stop, doubt as to sufficiency of evidence of negligence to go to jury held solved in favor of judgment for plaintiff.—Prall v. Des Moines City Ry. Co., Iowa, 202 N. W. 765.

72. **Taxation**—Wrongful Assessment.—Taxpayer's right to recover taxes wrongfully assessed would not be changed, because after filing of claim for refund with board of commissioners, county treasurer had made distribution of money.—American Mills Co. v. Fifer, Ind., 146 N. E. 870.

73. **Telegraphs and Telephones**—Right of Way.—Where owners of land granted to a telephone company a right of way over such land, to continue "in perpetuity," held that, in view of Act April 1, 1912 (P. L. p. 522), absence of the word "heirs" did not make such grant a mere revocable license, despite further provision that, if owners sold land, telephone company could move its lines to owner's adjacent land, as term "in perpetuity" in its generic sense means endless duration.—Central R. Co. of New Jersey v. New York Telephone Co. (No. 1), N. J., 128 Atl. 160.

47. **Workmen's Compensation** — Paralysis. — A worker in a packing plant was employed in carrying links of cold sausage from one part of the plant to another. She picked up the links with her right hand and draped them on her left arm, taking them to a carrier. The sausages were very cold and the temperature of the room was low. After a time she felt a numbness and also pains in her arms, which she first attributed to rheumatism, and this was followed by what the physicians termed "musculospiro paralysis," or wrist drop, due they said to exposure to cold, and for this an award of compensation was asked. Held, that the injury cannot be regarded as an "accidental" one within the meaning of the Workmen's Compensation Act.—Chop v. Swift & Co., Kan., 233 Pac. 800.

75.——Watchman Murdered.—Where night watchman was found murdered after quarrel, whether death arose out of and in course of employment, held for the jury; there being possible inference that deceased was attacked suddenly without warning, where duty to guard premises prevented his seeking safety in flight.—Todd v. Easton Furniture Mfg. Co., Md., 128 Atl. 42.